



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 680

IN THE MATTER OF TAMARIN LAUREL-PAINE

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Tamarin Laurel-Paine pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, § 4(j).

On September 5, 2002, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Laurel-Paine. The Commission has concluded its inquiry and, on November 26, 2002, found reasonable cause to believe that Laurel-Paine violated G.L. c. 268A, § 19.

The Commission and Laurel-Paine now agree to the following findings of fact and conclusions of law.

-Findings of Fact-

For all times relevant, Laurel-Paine was a member of Middlefield's planning board, a position she held from 1992 to 2002. In May 2001, Laurel-Paine was elected chair of the planning board. She did not actually chair any meetings until fall 2001, because at each planning board meeting during the spring and summer of 2001, at least part of the meeting related to land that she co-owned. In 2002, her term expired and she did not seek re-election to the board.

In March 2001, Laurel-Paine and her business partner applied to the Middlefield Zoning Board of Appeals for a special permit to build a 20,000 square foot warehouse for their business, with an attached house, on a 28-acre parcel they had purchased in the middle of town. The parcel, which was then zoned agricultural/ residential, abutted the town's business district.

1. The zoning board commenced its public hearing on Laurel-Paine's application for a special permit granting a home occupation use in April 2001. On April 30, 2001, the zoning board continued the hearing to give the board time to contact town counsel for advice.

2. Based on town counsel's advice to the zoning board, the selectmen decided that it would be appropriate to expand the business district to include Laurel-Paine's property, thereby providing a business-zoned location for which the zoning board could then issue a special permit for a business use.

3. By letter dated May 7, 2001, the selectmen petitioned the planning board "to consider expanding the current business district ... to include property recently purchased by Tamarin Laurel-Paine," and requested that the planning board hold a public hearing as required under G.L. c. 40A, § 5. Thereafter, the matter would go to the town for a vote at a special town meeting.

4. On May 14, 2001, the planning board held a meeting to discuss the matter of extending the business district. To avoid conflict-of-interest concerns, Laurel-Paine did not chair the meeting, but she did read into the record the May 7, 2002 letter from the selectmen to the Planning Board, and she handed out relevant documentation. (Thereafter, Laurel-Paine did not chair any subsequent Planning Board meetings at which the board discussed rezoning her property, nor did she cast any votes upon that particular matter.)

5. The planning board met again on May 22, 2001. The discussion turned to what had occurred following the zoning board hearing on Laurel-Paine's application. A selectman and zoning board member explained that the town had consulted with a lawyer who suggested that it would be better for the town to vote to amend the business district to include Laurel-Paine's property, rather than to defend a legal challenge of a zoning board special permit granting a home occupation use. In addition, the lawyer had said that "it wouldn't present a problem of 'spot zoning,' because 'it is a contiguous expansion of the existing district, and not a new creation on a lot isolated from the current business use.'" In response, a planning board member asked if the lawyer thought that the town "would alleviate a tenuous legal position by establishing a commercial district," which question was answered affirmatively. Shortly thereafter, Laurel-Paine stated that the "suggested creation of a new 'commercial' district for this one spot in town is opposite to the lawyer's advice for an extension of the existing [business] district not being spot zoning."

6. On June 4, 2001, the planning board conducted a public hearing on whether the board should recommend to town meeting that Laurel-Paine's parcel be rezoned. Laurel-Paine did not participate in the hearing.

7. Among the concerns raised in the context of the rezoning matter were whether to impose additional restrictions and regulations on business uses town-wide, and whether to impose a specific set of standards that would apply only to Laurel-Paine's property.

8. On June 7, 2001, the planning board convened again to discuss, among other things, what to recommend to town meeting regarding Laurel-Paine's property. Prior to resuming that discussion, Laurel-Paine spoke at length on the concept of

additional business regulations and restrictions. While her comments addressed general concerns on imposing new business use restrictions, Laurel-Paine made several references to the proposed restrictions in the context of the recent controversy that concerned her own property. The board then resumed discussing whether to recommend an expansion of the business district to include Laurel-Paine's property. Prior to the board's voting on that issue, Laurel-Paine reminded the board, "We are obligated to provide 'a report with recommendations by the planning board' to submit to Town Meeting," and asked what those recommendations were. After further discussion, the board, with Laurel-Paine abstaining, agreed that the proposal to extend the business district to include Laurel-Paine's property should be brought to the town for a vote, but without making any particular recommendations.

9. On July 30, 2001, the town voted to rezone Laurel-Paine's property by a vote of 133-50.

-Conclusions of Law-

10. Section 19 of G.L. c. 268A prohibits a municipal employee from participatingⁱ as such an employee in a particular matter^j in which, to his knowledge, he has a financial interest.ⁱⁱⁱ

11. As a planning board member, Laurel-Paine was, in May and June 2001, a municipal employee as that term is defined in G.L. c. 268A, § 1.

12. The town's decision on whether to rezone Laurel-Paine's property was a particular matter.

13. The planning board discussed that particular matter at its meetings in May and June 2001, as set forth above. By taking part in those planning board discussions as a planning board member, Laurel-Paine participated as a municipal employee in the above-noted particular matter.^{iv}

14. Laurel-Paine had a financial interest in the town's decision on rezoning her property because the decision would have a reasonably foreseeable impact how she could develop her land and her business. Laurel-Paine knew of this financial interest when she participated in the particular matter as described above.

15. Accordingly, by participating in the particular matter concerning the rezoning of her land, Laurel-Paine violated § 19.

-Resolution-

In view of the foregoing violation of G.L. c. 268A by Laurel-Paine, the Commission has determined that the public interest would be served by the disposition

of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Laurel-Paine:

- (1) that Laurel-Paine pay to the Commission the sum of \$1,000 as a civil penalty for violating G.L. c. 268A, § 19; and
- (2) that Laurel-Paine waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: April 28, 2003

ⁱ "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

ⁱⁱ "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

ⁱⁱⁱ "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.

^{iv} Laurel-Paine's participation in this particular matter in the meetings as set forth above would have been permissible had she formally recused herself as a planning board member, stepped down from her seat as a board member, and made clear that she was speaking as a private citizen on her own behalf. She did not do so. Although Laurel-Paine recused herself from chairing and voting as a planning board member, and publicly disclosed her business interests, those actions were not sufficient to avoid a violation of the conflict-of-interest law based on her active participation in the relevant discussions.